

## REMARKS

Continued examination is respectfully requested in view of the following remarks and amendments.

### **Disposition of Claims**

Claims 6-10, 16, 21 and 22 remain pending in the instant application. Specifically, claims 1-4 and 11 have been cancelled without prejudice or disclaimer in order to place the application in condition for allowance, while claims 12-20 have been either objected to or rejected in view of prior art cited by the Examiner. Finally, claims 6-10 and 21 have been previously allowed by the Examiner and claim 5 was previously cancelled without prejudice or disclaimer by the Applicant.

### **Allowable Subject Matter**

The Applicant gratefully acknowledges the allowance of independent claim 21 in addition to the previously allowed claims 6-10.

### **Objection to the Claims**

The Examiner has objected to claims 15 and 16 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim (e.g. independent claim 12) and any intervening claims (e.g. dependent claims 13, 14, and 15). In response, the Applicant has cancelled independent claim 12 as well as the intervening dependent claims 13, 14 and 15 and incorporated the limitations contained in these claims into claim 16 which as been rewritten in independent form. As such, the Examiner is respectfully requested to withdraw his objections to claims 15 and 16 in view of the aforementioned amendment made to claim 16 and indicate the allowance thereof.

### **Summary of Prior Art Rejections**

The Examiner has rejected claims 12-14 and 17-20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,600,997 to Kemp et al. ("Kemp") and U.S. Patent No. 5,546,009 to Raphael ("Raphael")

### **Claimed Invention As Presently Amended Is Patentable Over Kemp In View Of Raphael**

As noted above, the Examiner has rejected claims 12-14 and 17-20 as being unpatentable over Kemp in view of Raphael.

In response to the Examiner's objection to claims 15 and 16, the Applicant has cancelled independent claim 12 as well as dependent claims 13-15 while incorporating the limitations of those claims into newly amended independent claim 16 which the Examiner has indicated would be allowable if claim 16 were rewritten in independent form and amended to incorporate the limitations of all the intervening claims (e.g. claims 13, 14 and 15). Accordingly, the cancellation of claims 12-14 and 17-20 by the Applicant make the rejection of those claims moot.

### **New Claim 22 Is Allowable Over the Cited Prior Art**

The Applicant has added new claim 22 to the instant patent application directed to an apparatus responsive to the presence of a fluid at a predetermined level with in a fluid-receiving space. As shown, new independent claim 22 includes all of the claim limitations of independent claim 6, which the Examiner has previously indicated as being allowable, in addition to the further claim limitation of a control function that determines either a delay on make, delay on break, both a delay on make and a delay on break, or neither a delay on make and a delay on break operations. As such, new independent claim 22 should be considered allowable in view of the allowance of independent claim 6. Based on the foregoing, the Examiner is respectfully requested to indicate the allowance of independent claim 22.

## CONCLUSION

By the present amendment and remarks, the Applicant has amended the claims and provided arguments in support of his position that the claimed invention directed to a method of electronically determining whether fluid is at a predetermined level in a fail safe operation, a method of probe monitoring of liquid in a vessel by use of a probe associated with the vessel in a fail safe operation, and an apparatus responsive to the presence of a fluid at a predetermined level within a fluid-receiving space in a fail safe operation is patentable over the cited prior art. Based on the foregoing, the application is believed to be in a condition for allowance and expeditious notice thereof is earnestly solicited.

The Examiner is requested to call the undersigned attorney collect if he has any questions related to the Applicant's remarks.

Respectfully submitted,



April 5, 2007  
Date

Ari M. Bai, Reg. No. 38,726  
Polzinelli Shalton Flanigan Suelthaus, PC  
100 South Fourth Street, Suite 1100  
St. Louis, Missouri 63102-1825  
Telephone : (314) 552-6818  
Facsimile : (314) 231-1776